



Appeals

Handout #22 Revised 2/24/04

What are the different types or levels of appeals?

A final decision regarding an application may be appealed to different levels depending upon the type of land use review. A decision made by staff under a Type I or Type II review may be appealed to the county hearing examiner. A decision made by the county hearing examiner under a Type III review may be appealed to the Board of County Commissioners (BOCC). A decision by the BOCC may be appealed to Superior Court.

Who can appeal a decision regarding an application?

For Type I reviews, any interested party may appeal the decision. For a Type II reviews, only those who have submitted written comments to the Planning Director within the comment period and provided an accurate mailing address (i.e., know as "Parties of Record") may appeal the decision. For Type III reviews, only the applicant or "Parties of Record" may appeal the decision.

To qualify as a "Party of Record" you must:

Type II Review:

- Submit written comments to the Planning Director before the close of the public comment period; and,
- Provide an accurate mailing address.

Type III Review:

- Submit written comments before the close of the public hearing;
- Present testimony at the public hearing before the hearing examiner;
- Sign the "Sign-In Sheet" at the public hearing ; and
- Provide an accurate mailing address.

When must the appeal be filed?

Final decisions may be appealed only if a complete appeal application and appeal fee is submitted within 14 calendar days from the mailing of the land use decision.

Can I submit new evidence regarding the application being appealed?

For appeals of Type I and II reviews, new evidence may be submitted. For Type III reviews (i.e., appeals before the BOCC), the appeal hearing is "on the record" and, therefore, new evidence may not be submitted.

What are the appeal application fees?

Appeals before the Hearing Examiner for Type I or Type II review decisions require an application fee of **\$1,070**. Appeals before the BOCC for Type II

review decisions (i.e., those decisions made by the hearing examiner) require an application fee of **\$279**

If the appellant files a written statement withdrawing the appeal at least 15 calendar days before the appeal hearing, the fee will be refunded.

What is the application process?

To appeal a Type I or Type II review decision to the hearing examiner, the appellant must submit a completed appeal application form and fees, together with 4 copies of the appeal letter to the Department of Community Development or by mail to:

Public Service Center
Department of Community Development, Customer Service Center
1300 Franklin Street, P.O. Box 9810
Vancouver, WA 98666-9810.

To appeal a Type III review decision to the BOCC, the appellant must submit 1 copy of the appeal letter and fee to the Board of County Commissioners in person or by mail to:

Public Service Center
Clark County Administration
1300 Franklin Street
PO Box 5000
Vancouver, WA 98666-5000

The appeal letter must include the following:

- The case number designated by the County and the name of the applicant;
- The name and signature of each petitioner and a statement showing that each petitioner is entitled to file the appeal under Clark County Code (CCC) 40.510.010(E), 40.510.020(H) or 40.510.030(H). If multiple parties file a single petition for review, the petition shall designate one party as the contact representative for all contact with the planning director. All contact with the planning director regarding the petition, including notice, shall be with this contact representative;
- The specific aspect(s) of the decision and/or SEPA issue being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error; and,
- If the appeal concerns a Type III decision and the petitioner wants to introduce new evidence in support of the appeal, the written appeal must explain why such evidence should be considered, based on the criteria in CCC 40.510.030(H)(2)(c).

What is the difference between an appeal before the Hearing Examiner and Board of County Commissioners?

Appeal before the Hearing Examiner:

A public hearing will be held for applications appealed to the Hearing Examiner. It is a *de novo* hearing, which means the Hearing Examiner may accept new evidence. Anybody may present testimony on the appeal. In making the decision, the Hearing Examiner must determine if the proposed development meets the requirements of the applicable sections of the Clark County Code. This decision is made after reviewing the proposal, and after considering staff's recommendation and testimony from the public. The Hearing Examiner will approve, approve with conditions, or deny the application. This decision may be appealed to the BOCC.

All Parties of Record to the application and appeal will be mailed a copy of the Hearing Examiner's decision.

Appeal before the BOCC:

Appeals before the Board for Type III reviews are not open to public testimony, unless the Board decides to continue the matter to a limited hearing for receipt of oral argument.

The Board of Commissioners will consider appeals of Type III decisions on the record, including:

- All materials received in evidence at any previous stage of the review,;
- An audio or audio/visual tape of the prior hearing(s) or transcript of the hearing(s) certified as accurate and complete;
- The final order being appealed, and,
- Written argument by the parties.

If the Board decides to continue the matter to a limited hearing, the Board will:

- Designate the parties or their representatives to present argument, and establish the time limit for testimony in a manner calculated to afford a fair hearing of the issues specified by the board; and,
- At least 15 calendar days before the hearing, provide mailed notice to the parties entitled to notice of the decision being appealed. The notice shall indicate that only legal argument from designated parties will be heard.

At the conclusion of its public meeting or limited hearing for receipt of oral legal argument, the Board of Commissioners may affirm, reverse, modify or remand an appealed decision. A decision to remand a matter back to the Hearing Examiner for reconsideration is not appealable. Appeals from a decision on remand shall be treated as any other decision.

If the board affirms an appealed decision, they shall adopt a final order that contains the conclusions they reached regarding the specific grounds for appeal and the reasons for those conclusions. The board may adopt the decision of the lower review authority as its decision to the extent that decision addresses the merits of the appeal or may alter that decision.

If the board reverses or modifies an appealed decision, then the board shall adopt a final order that contains:

- A statement of the applicable criteria and standards in the code and other applicable law relevant to the appeal;
- A statement of the facts that the board finds showing the appealed decision does not comply with applicable approval criteria or development standards;
- The reasons to modify or reverse the decision; and,
- The decision to modify or reverse the decision and, if approved, any conditions of approval necessary to ensure the proposed development will comply with applicable criteria and standards.

The Board of Commissioners' office will mail notice of a decision on the merits of an appeal to parties entitled to notice and other parties who appeared orally or in writing before the board regarding the appeal.

**Public Service Center
Department of Community Development
1300 Franklin Street
P.O. Box 9810
Vancouver, WA. 98666-9810
Phone: (360) 397-2375; Fax: (360) 397-2011
Web Page at: <http://www.clark.wa.gov>**

DEVELOPMENT REVIEW APPLICATION FORM

(Form DS1000-Revised 12/4/03)



PROJECT NAME:		
TYPE(S) OF APPLICATION (See Reverse Side):		
DESCRIPTION OF PROPOSAL:		
APPLICANT NAME:	Address:	
E-mail Address:	Phone and Fax:	
PROPERTY OWNER NAME (list multiple owners on a separate sheet):	Address:	
E-mail Address:	Phone and Fax:	
CONTACT PERSON NAME (list if not same as APPLICANT):	Address:	
E-mail Address:	Phone and Fax:	
PROJECT SITE INFORMATION: Site Address:		Comp Plan Designation:
Cross Street:	Zoning:	Serial #'s of Parcels:
Overlay Zones:	Legal:	Acreage of Original Parcels:
Township:	Range:	¼ of Section:

AUTHORIZATION

The undersigned hereby certifies that this application has been made with the consent of the lawful property owner(s) and that all information submitted with this application is complete and correct. False statements, errors, and/or omissions may be sufficient cause for denial of the request. This application gives consent to the County to enter the properties listed above.

Authorized Signature

Date

Assigned at Customer Service Center	CASE NUMBER:	
	WORK ORDER NUMBER:	

APPLICATION TYPES

If you have any questions regarding the type of application being requested, our Customer Service Center will be happy to assist you.

- ☐ Annual Review
- ☐ Appeal
- ☐ Boundary Line Adjustment and Lot Reconfiguration
- ☐ Conditional Use

Environmental/Critical Areas:

- ☐ Archaeological
- ☐ Critical Aquifer Recharge Area (CARA)
- ☐ Columbia River Gorge
- ☐ Forestry + (Moratorium Waiver, Moratorium Removal, Class I, Class IVG or COHP)
- ☐ Floodplain
- ☐ Geological
- ☐ Habitat
- ☐ Historic
- ☐ SEPA
- ☐ Shoreline
- ☐ Wetland

Land Division:

- ☐ Binding Site Plan
- ☐ Final Plat
- ☐ Plat Alteration
- ☐ Short Plat (___ Infill)
- ☐ Subdivision (___ Infill)

Miscellaneous:

- ☐ Addressing
- ☐ Accessory Dwelling
- ☐ Covenant Release
- ☐ Garden Shed Setback Waiver
- ☐ Home Occupation
- ☐ Legal Lot Determination & Innocent Purchasers Determination
- ☐ Non-Conforming Use Determination
- ☐ Reconstruct Letter
- ☐ Sewer Waiver
- ☐ Shooting Range
- ☐ Sign

Planning Director Review:

- ☐ Post Decision
- ☐ Pre-Application Conference
- ☐ Pre-Application Waiver
- ☐ Public Interest Exception
- ☐ Similar Use
- ☐ Temporary Use
- ☐ Other

- ☐ Planned Unit Develop/Master Plan
- ☐ Road Modification
- ☐ Site Plan
- ☐ Variance
- ☐ Zone Change